

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
AL JAVIER,Plaintiff, :
: :
v. :
: :
ANTHONY RUSSO, et al., :
Defendants. :-----x12/28/22
ORDER

21 CV 7097 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

On December 20, 2022, the Court issued an Order deeming defendants' motion to dismiss the amended complaint (Doc. #36) fully submitted and unopposed. (Doc. #50).

By letter dated December 28, 2022, defense counsel states he received plaintiff's opposition papers by mail on December 23, 2022. (Doc. #51). Because the opposition papers were received after, and because the envelope enclosing them is postmarked after, plaintiff's December 12 deadline to oppose the motion, defendants ask the Court to continue to treat the motion as fully submitted and unopposed.

Defendants' application is DENIED. Although plaintiff's opposition was not filed on the ECF docket by the prescribed deadline, plaintiff's submission includes a "Certificate of Service" indicating it was mailed on December 7, 2022. (Doc. #51-1 at ECF 1). Moreover, all of plaintiff's submissions are signed and dated as of December 7, 2022. Under the "prison mailbox rule," courts generally treat documents submitted by incarcerated individuals as deemed filed on the date the individual delivers them to prison authorities for mailing. Noble v. Kelly, 246 F.3d 93, 97–98 (2d Cir. 2001); see also Hardy v. Conway, 162 F. App'x 61, 62 (2d Cir. 2006) (summary order) ("[I]n the absence of contrary evidence, district courts in this circuit have tended to assume that prisoners' papers were given to prison officials on the date of their signing.").

Therefore, the Court deems plaintiff's opposition to have been submitted timely, and VACATES the December 20, 2022, Order (Doc. #50). The Court will consider plaintiff's opposition in deciding the motion.

Defendants' request to file a reply by January 30, 2023, is GRANTED.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: December 28, 2022
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge